

**EXHIBIT E**

Fletcher G. Driscoll, Ph.D.

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IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - -

IN RE:

Methyl Tertiary Butyl : MDL NO. 1358 (SAS)  
Ether ("MTBE") :  
Products Liability :  
Litigation :

- - -

IN RE: :  
City of New York :

- - -

New York, New York  
Thursday, April 30, 2009

- - -

Videotaped Deposition of FLETCHER G.  
DRISCOLL, Ph.D., held at New York Law  
Department, Office of the Corporation Counsel,  
100 Church Street, on the above date,  
beginning at 10:36 a.m., before Kimberly A.  
Overwise, a Certified Realtime Reporter and  
Notary Public.

- - -

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<p>1 mean now you're saying there was only seven 2 faxes between you? 3 A I can only remember -- 4 MR. RICCARDULLI: Objection. 5 THE WITNESS: Excuse me. 6 Excuse me. I can only remember just, you 7 know, a limited number of faxes because 8 the information that he sent me were 9 generally portions of reports or 10 something that related to what somebody 11 else had actually put together, whether 12 related to chemistry, related to geology 13 at the sites, related to the well logs or 14 pump tests, anything like that. And when 15 I mean correspondence, just as I said, 16 I'm talking about telephone calls, faxes, 17 any other means of communication except 18 that we don't use e-mail. 19 BY MR. GREENE: 20 Q Was Mr. Kero's files produced, files 21 related to this litigation produced to defense 22 counsel for production to the City? 23 MR. RICCARDULLI: Objection. 24 A I presume he did. Rhea Lowell's -- 25 that's Rhea Lowell's job. And everything that</p>	<p>1 from Mr. Kero to you, any of that material 2 included in the materials produced to the 3 defendants? 4 MR. RICCARDULLI: Objection. 5 A Her job is to collate and then 6 forward every single thing that we have that's 7 enabled us to make these -- to create these 8 opinions, but we don't save drafts, we don't 9 save worksheets, we don't save documents that 10 are just in progress. 11 Q Fair enough, drafts, but how about 12 Mr. Kero sending you pieces of information, 13 correct, for you to review? And you are the 14 named person on here and that is the 15 information on which you base your opinion; 16 that's correct? 17 A What he sends me are pieces of a 18 document that we've received that I haven't 19 had a chance to review because Ms. Lowell 20 sends that document to Mr. Kero because that's 21 his area in which he's helping me. So Mr. 22 Kero then looks at it and says -- or makes a 23 decision on what's really important as it 24 relates to a potential opinion that we will 25 have and that's what we correspond about.</p>
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<p>1 relates to the case we release. 2 Q Did Ms. Lowell also assemble 3 Ms. Susan Mullin's electronics files related 4 to this litigation and produce them to defense 5 counsel for production to the City? 6 A I'm sure she did. 7 Q And did Ms. Lowell also collect 8 Mr. Mitchell's files in electronic and paper 9 and produce them to defendants for production 10 to the City in this litigation? 11 A Yes, sir. 12 Q And when would that have occurred? 13 MR. RICCARDULLI: Objection. 14 A That would have occurred at just the 15 time that we had to do that, and I frankly 16 don't know what that date was. I do know that 17 we met the requirement. We got all the 18 discovery documents into the proper place at 19 the proper time. 20 Q Were any documents -- and I 21 apologize, sir, because I have the benefit of 22 knowing what has been produced. 23 A Sure. 24 Q Were any original work product that 25 were generated, spreadsheets, correspondence</p>	<p>1 Q Do you know if prior to the issuance 2 of your expert report did Mr. Davis, to your 3 knowledge, ever run a model produced by 4 Malcolm Pirnie which was an MT3D model of two 5 sites adjacent to Station 6? 6 MR. RICCARDULLI: Objection. 7 A I don't know. 8 Q Do you know which model I'm 9 referring to? 10 A No, I don't. 11 Q Do you know that Malcolm Pirnie 12 conducted modeling of -- do you know if 13 Malcolm Pirnie conducted any modeling of two 14 sources next to Station 6? 15 MR. RICCARDULLI: Objection. 16 A I do know that Malcolm Pirnie has 17 identified two stations close to Station 6 as 18 potential sources. 19 Q Have you reviewed any of the 20 modeling associated with that? 21 A No, I haven't. 22 Q Have you reviewed a report entitled 23 "2007 VOC Removal Alternatives Analysis"? 24 MR. RICCARDULLI: Objection. 25 A I don't recall that I have, no.</p>

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<p>1 MR. RICCARDULLI: Objection.</p> <p>2 THE WITNESS: Active</p> <p>3 remediation let's say in terms of soil</p> <p>4 removal would be much, much greater, of</p> <p>5 course, than any sort of sense of</p> <p>6 bioremediation over a very short period</p> <p>7 of time.</p> <p>8 BY MR. GREENE:</p> <p>9 Q So if a site is not going under</p> <p>10 active remediation, would it likely be present</p> <p>11 in the aquifer for a longer period of time?</p> <p>12 MR. RICCARDULLI: Objection.</p> <p>13 A I think I'd like to just add to my</p> <p>14 last answer.</p> <p>15 Q Sure.</p> <p>16 A The likelihood of a large spill to</p> <p>17 be undetected or unreported I think would be</p> <p>18 small, that a large spill would be obviously</p> <p>19 noted by somebody and an action would be</p> <p>20 taken. So in your hypothetical, I would</p> <p>21 presume that most of those undiscovered spills</p> <p>22 would be fairly small in size and so their</p> <p>23 ultimate effect on a groundwater system would</p> <p>24 be less than probably the typical spill that</p> <p>25 you might have in a system.</p>	<p>1 Q Correct, we have generally. And I</p> <p>2 just want to know: Which individuals assisted</p> <p>3 you with this specific section of the report?</p> <p>4 A I'm not sure. It was probably David</p> <p>5 Mitchell that would have come up with some of</p> <p>6 the data here.</p> <p>7 Q Have you ever -- can you tell me</p> <p>8 what a consent order is?</p> <p>9 A Yes, an agreement with the</p> <p>10 government or with a regulatory body that</p> <p>11 certain actions will be taken. And the reason</p> <p>12 the consent order has been enacted is that up</p> <p>13 until that time, there hasn't been compliance</p> <p>14 with the particular regulation.</p> <p>15 Q Have you ever prior to today been</p> <p>16 asked to give testimony regarding legal</p> <p>17 documents such as legal complaints or consent</p> <p>18 orders?</p> <p>19 A We may have operated under consent</p> <p>20 orders in the past at various sites, but</p> <p>21 clearly I'm not a lawyer and so, therefore, I</p> <p>22 couldn't -- I can't give legal advice.</p> <p>23 Q Correct, but did you personally</p> <p>24 review the documents that are cited within the</p> <p>25 first portion of Section 2 that outline</p>
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<p>1 Q Have you -- go ahead, sir. Are you</p> <p>2 finished?</p> <p>3 A Typical spill that you would have in</p> <p>4 a system.</p> <p>5 Q In the course of your work on this</p> <p>6 project, have you reviewed a report issued by</p> <p>7 the New York State Department of Environmental</p> <p>8 Conservation called the USEPA 2007 Pilot</p> <p>9 Study?</p> <p>10 A I can't recall.</p> <p>11 Q Sir, I'm going to refer you to your</p> <p>12 fourth opinion. Excuse me. I'm going to</p> <p>13 refer you to your --</p> <p>14 A Are we through with Maguire's?</p> <p>15 Q We are through for now with that</p> <p>16 one.</p> <p>17 Page 12. Your second opinion. I</p> <p>18 misspoke. Did you have assistance in drafting</p> <p>19 this portion of the report?</p> <p>20 A In writing the report?</p> <p>21 Q Did you have assistance in gathering</p> <p>22 the information in writing this section of the</p> <p>23 report?</p> <p>24 A Yes, sir. We've already identified</p> <p>25 those individuals.</p>	<p>1 certain consent orders and complaints filed by</p> <p>2 EPA and DEC against the City?</p> <p>3 A I didn't review those documents, the</p> <p>4 consent orders.</p> <p>5 Q You didn't review the documents?</p> <p>6 A I didn't review the consent orders,</p> <p>7 no. If Mr. Mitchell actually helped me on</p> <p>8 this thing, I'm sure he looked at those.</p> <p>9 Q Do you know why you were asked to</p> <p>10 review the consent orders as part of your work</p> <p>11 on this case?</p> <p>12 MR. RICCARDULLI: Objection.</p> <p>13 A One of the things that we noticed</p> <p>14 early on in the work that Mr. Terry did is</p> <p>15 that he seemed to be ignoring the public</p> <p>16 release sites in this urban environment. And</p> <p>17 so we wanted to determine how many there were</p> <p>18 and whether they had been in compliance in the</p> <p>19 same fashion that industry had been urged to</p> <p>20 update their tank systems and do their</p> <p>21 remediation and everything else. And so we</p> <p>22 just wanted to see what role those facilities</p> <p>23 played in the overall contamination by MTBE of</p> <p>24 the Queens aquifer.</p> <p>25 Q Did Mr. Mitchell in working on this</p>

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<p>1 report receive any assistance from counsel in 2 reviewing the consent orders and complaints 3 that are referenced in the first part of this 4 section? 5 A I'm sure he did not. 6 Q And is he a lawyer? 7 A No. 8 Q Does he have any familiarity with 9 the RCRA regulations? 10 A Well, I do because obviously we 11 worked on them for many, many years, and 12 several of the people I have in the company 13 have worked under RCRA orders before at other 14 sites. 15 Q Do you know if Mr. Mitchell has? 16 A I don't recall. 17 Q Do you know what aspect of the RCRA 18 regulations you -- well, what aspect of the 19 RCRA regulations have you worked on? 20 A Well, I think it would be fair to 21 say my experience is mostly under CERCLA, but 22 occasionally we've gotten involved in a RCRA 23 project, especially when I was working with 24 Geraghty and Miller. We do not do -- our 25 company does not do RCRA type work on sites.</p>	<p>1 how the waste got into the environment. In 2 other words, try to look at the facility, look 3 at the operations, try to judge the volume of 4 the particular chemical that was used there, 5 how it got out of the building and into the 6 environment and then how it spread on the 7 site. 8 Q Is Mr. Mitchell qualified to 9 interpret legal documents like consent orders 10 and legal Complaints? 11 MR. RICCARDULLI: Objection. 12 A He's not a lawyer so I have to say 13 no. 14 Q Are you qualified to interpret legal 15 documents such as consent orders and legal 16 Complaints? 17 A No, I'm not. 18 MR. RICCARDULLI: Objection. 19 Q You can answer it. I'm sorry. 20 A No, I'm not. 21 Q Okay. I want to refer you to Page 22 14. And you have a subopinion that begins: 23 "At least 19 confirmed or highly likely 24 releases of MTBE to groundwater have occurred 25 at publicly-owned sites in and near the JWS</p>
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<p>1 We don't haul hazardous waste or do the normal 2 things that a consultant would do on the site, 3 but during the time I was with Geraghty and 4 Miller, I had to become pretty familiar with 5 RCRA regs and RCRA rules. 6 Q Did you ever work on a project 7 regarding the RCRA's underground storage tank 8 regulations? 9 A I can't recall whether I did or not. 10 Q Do you know if Mr. Mitchell, do you 11 know if he has ever worked on a matter 12 regarding the UST regulations in RCRA? 13 A I don't know. He worked for another 14 consultant before we hired him and he may well 15 have done that there. While he's been with 16 us, he has not. 17 Q And when you describe -- and I've 18 seen this on your resume. You describe that 19 you've worked on RCRA in the past; correct? 20 A Well, in conjunction with Geraghty 21 and Miller and their activities, yes. 22 Q And when you were working on it, you 23 were working primarily on transport storage 24 and disposal facility work? 25 A Mostly just in the identification of</p>	<p>1 service area." 2 Do you see where I'm reading? 3 A No. 4 Q Page 14. 5 A Is it a footnote? 6 Q It is the heading of that section. 7 A Oh, yes, I see. 8 Q Who's responsible for reviewing 9 information regarding the City's underground 10 storage tanks? 11 A I believe Mr. Mitchell came up with 12 this estimate, but Rhea Lowell may have 13 assisted him. 14 Q And what data sources did he use to 15 come up with this estimate? 16 A I can't tell you that. 17 Q Did you review any of the City 18 sites? 19 A No, I have not. 20 Q In Paragraph 11, there's certain 21 criteria that are used to classify City sites 22 and there's four categories. There's 23 confirmed, likely, possible, and unlikely. 24 Who developed the criteria, those four 25 criteria?</p>

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